



Governor's Juvenile Law Commission

November 10, 2004

Commission Members Present

Katie Humphreys
Amy Karozos for Susan Carpenter
Pam Cline
Steve DeMougin
Bruce Donaldson
Roger Duvall
Ralph Foley
Glenn Howard
Larry Landis
Bob Marra
James Payne
Diane WeissBradley

Agency

JLC Chair
State Public Defender
DOC
FSSA
IJJTF Board Member
Scott County Prosecutor
House of Representatives
Senate
Public Defender Council
DOE
Marion Superior Court, Juvenile Div.
Lake Co. Juvenile Court Probation

Commission Members Absent

Melvin Carraway
Robert Kuzman
David Long
Chessie Smith-Hacker
Justice Robert Rucker
Viola Taliaferro
Robin Tew
Connie Windhorst

Agency

Indiana State Police
House of Representatives
Senate
Youth Representative
Indiana Supreme Court
Monroe Circuit Court
ICJI
Parent Representative

Staff Present

Nikki Kincaid
Micah Cox

Agency

ICJI
ICJI

Contract Staff Present

Laurie Elliott
Jim Hmurovich
Michelle Tennell

Agency

Youth Law T.E.A.M.
Staff
ICJI

I. Called to Order: 10:15 a.m.
By: Katie Humphreys, Chair of the Governor's Juvenile Law Commission.

II. Minutes of October 13, 2004 meeting were distributed via e-mail and mail prior to meeting and distributed via handout for review.

Motion to approve: Rep. Foley
Second: Steve DeMougin
Motion carried. Minutes approved by consensus without changes or additions.

III. Review and Approval of Revised Draft Recommendations

The Chair gave an overview of the work of the Governor's Juvenile Law Commission to date. The Commission members reviewed and approved fourteen (14) of the nineteen (19) recommendations made by the subcommittees at the October 2004 meeting. The five (5) remaining recommendations (#6, #7, #8, #10, and #11) which were tabled at the last meeting will be reviewed and voted on.

Governor's Juvenile Law Commission

SUMMARY OF RECOMMENDATIONS

Identification, Assessment and Service Referral Subcommittee

Recommendation #6

It is recommended that there be a standard process that is followed to identify, screen, assess, and link necessary services with children and families. While it is universally recognized that children entering the juvenile justice and child welfare systems be screened and assessed, it is additionally recommended that all children receive well-being screenings as part of the routine examination/screenings that occur in the health care and/or education systems. Information obtained in this process must be shared with appropriate parties involved with the child and family. The selected screening and assessment instruments must be recognized as a legitimate and acceptable tool that will be accepted by the various systems that serve children.

Chair opens floor for questions and comments.

Bob Marra makes a motion to strike the term "education" from the language of this recommendation.

Senator Foley seconds the motion.

Discussion:

Bob Marra outlined his concerns regarding this recommendation as follows:

1. After discussing this recommendation with Suzanne Clifford he has learned that there are potentially over 25,000 students who could be considered seriously emotionally disturbed and currently there is funding for approximately 50% of these children.
2. There is a stigma attached to a mental health screening that is unlike any attached to a vision or hearing screening, especially if a finding of the need for further evaluation is made.
3. There are inconsistencies of screening instruments. There are too many variables such as who is giving the screening, where they are given, how they are given and when they are given. While people may be trained to use one specific tool, the variables will remain.

Bob Marra agrees that more mental health services must be provided to our youth. He does not agree with such a global approach.

Rep. Foley inquires about changing the wording from “all” children to “other” children to allow for those children already identified within the educational system as at-risk due to the behaviors they have exhibited, the opportunity to be screened. Further, we don’t want to continually screen, screen, screen without providing services.

Bob Marra agrees and believes this can be accomplished through the Special Education system.

Rep. Foley asks how behavioral issues are addressed within the Special Education system. Perhaps a change from “other” children to a different modifier should be considered.

Nikki Kincaid states that the change from “all” to “other” children has been agreed upon by the Commission previously and is reflected in the revised summary of recommendations. However, Bob Marra appears to want to define “other” children more clearly.

Diane WeissBradley interjects. States she is a great proponent of screening; however, she does agree with Bob Marra that stigma, isolation and other consequences may occur due to a child’s identification as in need of further mental health evaluation after a screening is performed. Some of the consequences of screenings are good, such as recognizing a CHINS early in their childhood and being able to provide early intervention. Diane WeissBradley believes there should be some “probable cause” to perform the screening. Further, the parents should be brought in, immediately. The system should involve the parents and educate the parents regarding the screening and avoid what could potentially be an adversarial relationship.

Diane WeissBradley likens this situation to placing children on psychotropic medications. The parents must be involved and educated about the need of the child. The parent should also be given the opportunity to oppose or question the recommendation. If there is disagreement between the parent and the system, there should be some mechanism in place to provide for arbitration in order to resolve the

situation to the benefit of the child. We should avoid the appearance of doing this *to* parents and approach these situations in the spirit of doing things in the best interest of the child *with* parents.

Judge Payne states he believes that if you begin down this path of universal screening, it does not stand the test because of the expense associated with global screening as well as that associated with follow through by the system to provide services.

He suggests stating that “under appropriate circumstances” well-being screenings may occur.

Roger Duvall agrees that children who are at-risk are being missed at an early age. He also believes that performing a screening in the 5th grade is too late. Mr. Duvall does agree that the intent of the recommendation should remain. The system must do some screening early on. He agrees with the verbiage proposed by Judge Payne, “under appropriate circumstances.”

Pam Cline states she is very much in favor of doing early identification screenings. She does agree that there is an inherent stigma attached with mental health issues; however, once a child has been identified at at-risk, these issues must be addressed for the benefit of the child. Often she sees parents who themselves are so damaged/deranged they are in no position to make the decision alone.

Amy Karozos states she believes parental consent is a must at the level of screening the JLC is considering.

Bob Marra withdraws his motion. Rep. Foley consents.

Bob Marra then introduces both State and Federal Code pertaining to this subject. Specifically, US Code: Title 20,1232h. Protection of pupil rights and IC 20-10.1-4.15 Access to materials relating to personal analysis, evaluation, or survey of students; consent for participation.

The US Code states in part: “No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning... (2) mental or psychological problems of the student or the student’s family without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

The Indiana Code states in part: Access to materials relating to personal analysis, evaluation, or survey of students; consent for participation...(b) A student shall not be required to participate in a personal analysis, an evaluation, or a survey that is not directly related to academic instruction and that reveals or attempts to affect the student’s attitudes, habits, traits, opinions, beliefs, or feelings concerning: (3) mental or psychological conditions that might embarrass the student or the student’s family.

Diane WeissBradley asks if this recommendation should include the language “with parental consent or Order of the Court”.

Judge Payne believes that a court order is implicit.

Bob Marra further states that there are rules currently in place to allow a Hearing Officer in the Special Education department to compel the parents/guardians to allow for a child’s screening if there is the possibility the child might suffer from a disability. The only variable is how the mechanism in place is used to compel such screenings.

Judge Payne asks Pam Cline for her opinion regarding how many children in DOC are 2-4 years behind academically and have never been screened. Pam Cline responds, “Practically all of them.” She goes on to say she believes there must be a major, combined effort across systems because identifying children with these problems requires such an effort. Finally she would prefer that a child with mental health issues not have to go to court in order to receive approval to receive mental health services.

The Chair requests that the Commission members think of this recommendation in its pure form.

Bob Marra agrees and suggests that from the “30,000 foot level” this recommendation may be agreeable.

Judge Payne believes all steps are available and in place to provide for this recommendation and the services it requests, we just have to determine whether we are committed to this.

Bruce Donaldson suggests that the term “other” children be left in with the added verbiage of “under appropriate circumstances.”

Motion to Approve with Changes: Rep. Foley
Second: Roger Duvall

Consensus for approval of Recommendation #6 was reached by Commission members.

Planning, Policy & Systems Development Subcommittee

Recommendation #7

It is recommended that Indiana law be changed from a two-tiered (juvenile court - adult court jurisdiction) system to reflect a three-tier system consisting of: (1) juvenile court jurisdiction, (2) youthful offender/extended jurisdiction under juvenile court jurisdiction, and (3) adult court jurisdiction. It is further recommended that the Governor’s Juvenile Law Commission review, eliminate, and/or reduce the number of direct file offenses (IC 31-30-1-4) as part of the development of a three-tier system.

Chair opens floor for discussion.

Nikki Kincaid, speaking on behalf of Judge Taliaferro, states that the sticking point for the Judge regarding this recommendation remains giving the juvenile court extended jurisdiction versus allowing for extension of the adult system into the juvenile court, which she opposes.

Amy Karozos states that she believes this 3rd tier should expand options for the juvenile court into the adult system, not vice versa.

Roger Duvall states there will always be the need for the direct file and waiver options.

Nikki Kincaid explains that the intent of this recommendation and its extended jurisdiction does not replace direct file or waiver options currently available to the courts.

Rep. Foley points out that the proposed implementation for this recommendation is not until July 2007. He suggests that this will allow time for discussion and to “flesh out the details” of this recommendation. He does support the concept of the three-tier system; however, he also points to the fact that there will always be youth who are recoverable and youth who are not.

Judge Payne is in favor of the language as well as the three-tier system. He states that IYC recognized 35 years ago the concept that there is a category of youth which do not belong in either the juvenile or adult systems. Finally, Judge Payne hopes the newly elected administration will look to the Missouri model of juvenile justice system for some guidance and information.

Motion to approve: Judge Payne
Second: Diane WeissBradley

Consensus for approval of Recommendation #7 was reached by Commission members.

Recommendation #8

It is recommended that all misdemeanor traffic offenses involving juveniles under the age of 18 originate under juvenile court jurisdiction

Chair opened floor for discussion.

Nikki Kincaid states that per the recommendation of the JLC, the words infractions and ordinances were taken out of the language.

Judge Payne believes it is a total contradiction to place children in the adult system for misdemeanor traffic offenses. Like the state of Virginia, all traffic offenses go through the juvenile court and receiving and keeping a drivers license as a juvenile is considered to be a privilege, not a right.

Larry Landis is concerned about the impact on the smaller counties' juvenile court system and asks for input.

Roger Duvall states he believes this recommendation is a sound one and should not adversely affect the smaller counties such as the county he represents, Scott County.

Motion to Approve: Roger Duvall
Second: Diane WeissBradley

Consensus for approval of Recommendation #8 was reached by Commission members.

Recommendation #10

It recommended that Indiana Code I.C. 35-50-2-2.1 (Juvenile Record Suspension Statute) be repealed.

Chair opens floor for discussion.

Amy Karozos states that this recommendation simply puts discretion back in the judges' hands rather than "forcing" their hand.

Nikki Kincaid and Jim Hmurovich state that the Sentencing Study Commission is not currently looking at this issue and it is appropriate for the Juvenile Law Commission to consider.

Roger Duvall states that he does not personally have a problem with this recommendation; he does have a problem with D felonies being included and wishes to strike any reference to D felonies from this recommendation.

The Chair asks if the Commission supports this idea conceptually with some changes.

Amy Karozos responds that these kids are subject to judges' discretion.

Judge Payne states this does not sound like a juvenile law; it sounds like an adult court issue.

An explanation was given by subcommittee members about the origin of this recommendation and the fact that it came out of a discussion surrounding a juvenile's right to a jury trial.

Nikki Kincaid concurred and stated the subcommittee's belief that if this recommendation moved forward it would be handled by the appropriate Commission.

Motion to Approve: Larry Landis
Second: Amy Karozos

Three dissenters: Roger Duvall, Judge Payne and Rep. Foley
One abstention: Bob Marra

Recommendation #10 Approved by Majority Vote

Recommendation #11

Indiana code should be reviewed and, if necessary, revised to ensure that it is not in violation with the Juvenile Justice and Delinquency Prevention Act of 2002.

Chair opens floor for discussion.

Roger Duvall asks Nikki Kincaid if this recommendation basically includes the bare minimum that must be included in last year's proposed legislation.

Nikki Kincaid responds affirmatively.

Motion to Approve: Rep. Foley
Second: Roger Duvall

Consensus for approval of Recommendation #11 was reached by Commission members.

IV. Discussion of Draft Report to the Governor

The Chair suggests that the JLC report include an Executive Summary as well as a report summarizing other committees and commissions undertaking similar work. The report will explain the format of the JL Commission's work and then place all of the Commission's recommendations under the four cornerstone issues identified by the Commission.

The newly elected Gov. Mitch Daniel's transition team as well as Governor Kernan will receive copies of the Commission Report including its recommendations.

Senator Long and the Chair believe the Commission may need to meet one to two times during the 2005 legislative session and then set a date for conclusion of the Commission's work for approximately June 30, 2005.

Steve DeMougin pointed out that page 26 of the report stated a caseload standard for child welfare workers of 15 active investigations per month. This number should read 12 active investigations per month. Also should Senate Enrolled Act 1 be mentioned on page 27 of the report?

Bruce Donaldson's name was inadvertently left off the Draft Report to the Governor and will be added. Additionally, all subcommittee members will be recognized for their great work.

Regarding the final report, it will include all of the specific language and changes agreed upon during this meeting.

Timeline for Report Submission:

Identify key stakeholders by December 1, 2004.

- 150 members of the General Assembly
- Past members of the General Assembly
- Juvenile Court Judges and Probation Officers
- School Superintendents
- Prosecutors
- Public Defenders
- Others as identified

All recommendations for addition to the stakeholder distribution shall be forwarded to Nikki Kincaid.

Report will be disseminated to all stakeholders during the first part of December 2004. The Judicial Center will send a letter of introduction accompanying the report sent to the Juvenile Court Judges as well as Juvenile Probation Officers. Any input from stakeholders may be included as an attachment to the report to the Governor.

The final report will be transmitted to the Governor as well as the Governor Elect by December 31, 2004.

V. New Business

Roger Duvall will become a member of the Judiciary in January 2005. Therefore, he suggests that a new prosecutor be appointee to the Commission, if necessary.

Chair thanks Mr. Duvall for his service and goes on to thank all members of the Governor's Juvenile Law Commission as well as the staff and consultants for a job well done. Chair also recognizes members of the audience for their attendance and participation in the Juvenile Law Commission meetings.

Chair suggests that the December JLC meeting be cancelled and that the Commission plan to meet at least two more times in 2005. Members concur.

Next Meeting: TBD

Meeting adjourned by Chair at 11:45 am.